

CLERKS OFFICE U.S. DIST. COURT
AT LYNCHBURG, VA
FILED

1/23/2020

JULIA C. DUDLEY, CLERK
BY: s/ CARMEN AMOS
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

JOHN DOE,

Plaintiff

v.

WASHINGTON AND LEE
UNIVERSITY,

Defendant

Civil Action No. 6:19-cv-00023

ORDER

On July 31, 2019, John Doe (“John”) served document requests on Defendant Washington and Lee University (“W&L” or “the University”) which seek, amongst other things, documents that constitute the “education records,” as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”) and 34 C.F.R. § 99.3, of non-party current and former W&L students.

According to 34 C.F.R. § 99.31(a)(9)(i), W&L may only produce these non-party education records after providing each student whose education records are at issue with an opportunity to seek protective action from this Court.

W&L has requested the Court’s assistance in implementing the notification of students whose education records are at issue and the production of these materials.

Based upon the foregoing, IT IS HEREBY ORDERED as follows:

1. To the extent that any of the document requests made by John to W&L seek documents that constitute the “education records” of non-party current or former W&L students, W&L is hereby ordered to produce such documents in accordance with 20 U.S.C.

§1232g(b) and 34 C.F.R. § 99.31(a)(9)(i), provided that the notice protocol set forth below is followed.

2. Before producing any non-party education records, W&L shall make a reasonable effort in accordance with 34 C.F.R. § 99.31(a)(9)(ii) to notify the non-party students whose records have been requested. Students whose education records have been requested shall be given 14 days to object to the production of documents that include their education records.

These students shall receive a letter providing this notice:

The Plaintiff in the lawsuit entitled *John Doe v. Washington and Lee University*, Case No. 6:19-cv-00023, now pending before the United States District Court for the Western District of Virginia, Lynchburg Division, has requested documents maintained by Washington and Lee University (“W&L”) relating to Plaintiff’s claims against W&L. These documents include the Plaintiff’s (John Doe’s) disciplinary records, some of which include information provided by you or about you, and therefore may constitute your “education records,” as that term is defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”).

The Court has ordered that W&L produce these records to Plaintiff and W&L intends to produce these records in compliance with this order. Before doing so, W&L must notify affected students of their right to object to this production. This letter is intended to provide you with this notice.

The Court’s Order allows you 14 days from the date W&L provides you with this notice to seek protective action in accordance with 34 C.F.R. § 99.31(a)(9)(ii). You may do so by submitting a letter to the Court at the mailing address below:

Clerk’s Office
U.S. District Court for the Western District of Virginia
Lynchburg Division
1101 Court Street, Suite A66
Lynchburg, VA 24504

If you do not object to this production, W&L will produce the documents requested by Plaintiff to comply with the Court’s Order. W&L will make this production subject to a Protective Order issued by the court for this case. This Protective Order prohibits the Plaintiff from disclosing these documents to anyone other than the Plaintiff’s attorneys and other agents, and prohibits the Plaintiff from using these documents for any purpose other than the prosecution of this case.

W&L cannot provide you with legal advice regarding this notice; however, you have a right to seek independent counsel if you wish. Additionally, if you have any general questions about this notice or what records may be produced, current students may contact their respective Class Deans. Former students with similar inquiries should contact W&L's Office of General Counsel at (540) 458-8940.

Copies of the pertinent court orders are enclosed.

3. The notice shall not include any other instructions from W&L aside from the text in Paragraph 2 above.

4. W&L officials may not provide legal advice to any non-party student with respect to the notice. However, W&L officials may discuss the notice with students and former students, may answer general questions about the notice, may state that the notice recipient may advise the Court directly of any concerns the recipient has, may describe the nature of the recipient's records in question, and may offer appropriate support resources to the recipient, including but not limited to counseling services.

5. After the 14 day notice period expires, and after allowing sufficient time for the Court to advise W&L of any requests for protective action, W&L shall promptly produce the documents about which no request for protective action was made by a non-party student. W&L will produce these documents with redaction stamps that include student-specific pseudonyms for each student whose education records are included in the documents (i.e., Student 1, Student 2, etc.). W&L will also provide John with a legend so that he can determine the identities of the students that correspond with each pseudonym.

6. Any education records produced by W&L pursuant to this order, and the legend described above, will be subject to the Protective Order issued in this case (See Dkt. 32).

IT IS SO ORDERED.

BY:

Robert S. Ballou

Magistrate Judge Robert S. Ballou

January 23, 2020